

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:
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PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference B0662.70057		Date of mailing (day/month/year) 22 JAN 2007¹
FOR FURTHER ACTION See paragraph 2 below		
International application No. PCT/US04/29437	International filing date (day/month/year) 09 September 2004 (09.09.2004)	Priority date (day/month/year) 09 September 2003 (09.09.2003)
International Patent Classification (IPC) or both national classification and IPC IPC: G01N 33/53(2006.01); C12Q 1/48(2006.01) USPC: 435/7.1,15		
Applicant BETH ISRAEL DEACONESS MEDICAL CENTER, INC.		

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☒ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

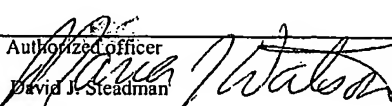
2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (571) 273-3201	Date of completion of this opinion 22 December 2006 (22.12.2006)	Authorized officer  David J. Steadman Telephone No. 571-272-1600
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WRITTEN OPINION OF THE
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International application No.

PCT/US04/29437

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of:

- ☒ the international application in the language in which it was filed
- ☐ a translation of the international application into _____, which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

- ☐ a sequence listing
- ☐ table(s) related to the sequence listing

b. format of material

- ☐ on paper
- ☐ in electronic form

c. time of filing/furnishing

- ☐ contained in the international application as filed.
- ☐ filed together with the international application in electronic form.
- ☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

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Box No. IV Lack of unity of invention

1. ☒ In response to the invitation (Form PCT/ISA/206) to pay additional fees the applicant has, within the applicable time limit:
- ☐ paid additional fees
 - ☐ paid additional fees under protest and, where applicable, the protest fee
 - ☐ paid additional fees under protest but the applicable protest fee was not paid
 - ☒ not paid additional fees
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rule 13.1, 13.2 and 13.3 is
- ☐ complied with
 - ☒ not complied with for the following reasons:
See the lack of unity section of the International Search Report (Form PCT/ISA/210)

4. Consequently, this opinion has been established in respect of the following parts of the international application:
- ☐ all parts.
 - ☒ the parts relating to claims Nos. 1-4

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Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>2-4</u>	YES
	Claims <u>1</u>	NO
Inventive step (IS)	Claims <u>2</u>	YES
	Claims <u>1, 3-4</u>	NO
Industrial applicability (IA)	Claims <u>1-4</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claim 1 lacks novelty under PCT Article 33(2) as being anticipated by Baas et al. (EMBO J. 22:3062-3072, 2003). Baas et al. teaches an activity assay in the presence and absence of STRAD or a mutant thereof and thus anticipates claim 1.

Claims 3-4 lack an inventive step under PCT Article 33(3) as being obvious over Baas et al. Baas et al. teaches mutant STRAD proteins that are not phosphorylated by LKB1 and it would have been obvious to assay the activity of LKB1 in the presence of STRAD or in the presence of STRAD and mutant STRAD to determine if the mutants are dominant negative proteins.

Claim 2 meets the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the claimed invention.

Claims 1-4 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.